

**Introduced by Senators DeSaulnier and Steinberg  
(Coauthors: Senators Hancock, Lieu, Pavley, and Price)**

(Coauthor: Assembly Member Blumenfield)

February 22, 2013

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An act to add Section 805.8 to the Business and Professions Code, to amend Sections 11165 and 11165.1 of the Health and Safety Code, and to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 809, as introduced, DeSaulnier. Controlled substances: reporting.

(1) Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

Existing law requires dispensing pharmacies and clinics to report, on a weekly basis, specified information for each prescription of Schedule II, Schedule III, or Schedule IV controlled substances, to the department, as specified.

This bill would establish the CURES Fund within the State Treasury to receive funds to be allocated, upon appropriation by the Legislature, to the Department of Justice for the purposes of funding CURES, and would make related findings and declarations.

This bill would require the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the

Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, and the California Board of Podiatric Medicine to increase the licensure, certification, and renewal fees charged to practitioners under their supervision who are authorized to prescribe or dispense controlled substances, by up to 1.16%, the proceeds of which would be deposited into the CURES Fund for support of CURES, as specified. This bill would also require the California State Board of Pharmacy to increase the licensure, certification, and renewal fees charged to wholesalers, nonresident wholesalers, and veterinary food-animal drug retailers under their supervision by up to 1.16%, the proceeds of which would be deposited into the CURES Fund for support of CURES, as specified.

(2) Existing law permits a licensed health care practitioner, as specified, or a pharmacist to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care. Existing law also authorizes the Department of Justice to provide the history of controlled substances dispensed to an individual to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

This bill would require licensed health care practitioners, as specified, and pharmacists to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care, and, upon the happening of specified events, to access and consult that information prior to prescribing or dispensing Schedule II, Schedule III, or Schedule IV controlled substances.

(3) Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax upon qualified manufacturers, as defined, for the privilege of doing business in this state, as specified. This bill would also impose a tax upon specified insurers, as defined, for the privilege of doing business in this state, as specified. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the board to deposit all taxes, penalties, and interest collected pursuant to these provisions in the CURES Fund,

as provided. Because this bill would expand application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:  
3 (a) The Controlled Substance Utilization Review and Evaluation  
4 System (CURES) is a valuable investigative, preventive, and  
5 educational tool for law enforcement, regulatory boards,  
6 educational researchers, and the health care community. Recent  
7 budget cuts to the Attorney General's Division of Law Enforcement  
8 have resulted in insufficient funding to support the CURES  
9 Prescription Drug Monitoring Program (PDMP). The PDMP is  
10 necessary to ensure health care professionals have the necessary  
11 data to make informed treatment decisions and to allow law  
12 enforcement to investigate diversion of prescription drugs. Without  
13 a dedicated funding source, the CURES PDMP is not sustainable.  
14 (b) Each year CURES responds to more than 60,000 requests  
15 from practitioners and pharmacists regarding all of the following:  
16 (1) Helping identify and deter drug abuse and diversion of  
17 prescription drugs through accurate and rapid tracking of Schedule  
18 II, Schedule III, and Schedule IV controlled substances.  
19 (2) Helping practitioners make better prescribing decisions.  
20 (3) Helping reduce misuse, abuse, and trafficking of those drugs.  
21 (c) Schedule II, Schedule III, and Schedule IV controlled  
22 substances have had deleterious effects on private and public  
23 interests, including the misuse, abuse, and trafficking in dangerous  
24 prescription medications resulting in injury and death. It is the  
25 intent of the Legislature to work with stakeholders to fully fund

1 the operation of CURES which seeks to mitigate those deleterious  
2 effects, and which has proven to be a cost-effective tool to help  
3 reduce the misuse, abuse, and trafficking of those drugs.

4 SEC. 2. Section 805.8 is added to the Business and Professions  
5 Code, to read:

6 805.8. (a) (1) The Medical Board of California, the Dental  
7 Board of California, the California State Board of Pharmacy, the  
8 Veterinary Medical Board, the Board of Registered Nursing, the  
9 Physician Assistant Committee of the Medical Board of California,  
10 the Osteopathic Medical Board of California, the State Board of  
11 Optometry, and the California Board of Podiatric Medicine shall  
12 increase the licensure, certification, and renewal fees charged to  
13 practitioners under their supervision who are authorized pursuant  
14 to Section 11150 of the Health and Safety Code to prescribe or  
15 dispense Schedule II, Schedule III, or Schedule IV controlled  
16 substances by up to 1.16 percent annually, but in no case shall the  
17 fee increase exceed the reasonable costs associated with  
18 maintaining CURES for the purpose of regulating prescribers and  
19 dispensers of controlled substances licensed or certificated by these  
20 boards.

21 (2) The California State Board of Pharmacy shall increase the  
22 licensure, certification, and renewal fees charged to wholesalers  
23 and nonresident wholesalers of dangerous drugs, licensed pursuant  
24 to Article 11 (commencing with Section 4160) of Chapter 9, by  
25 up to 1.16 percent annually, but in no case shall the fee increase  
26 exceed the reasonable costs associated with maintaining CURES  
27 for the purpose of regulating wholesalers and nonresident  
28 wholesalers of dangerous drugs licensed or certificated by that  
29 board.

30 (3) The California State Board of Pharmacy shall increase the  
31 licensure, certification, and renewal fees charged to veterinary  
32 food-animal drug retailers, licensed pursuant to Article 15  
33 (commencing with Section 4196) of Chapter 9, by up to 1.16  
34 percent annually, but in no case shall the fee increase exceed the  
35 reasonable costs associated with maintaining CURES for the  
36 purpose of regulating veterinary food-animal drug retailers licensed  
37 or certificated by that board.

38 (b) The funds collected pursuant to subdivision (a) shall be  
39 deposited in the CURES accounts, which are hereby created, within  
40 the Contingent Fund of the Medical Board of California, the State

Dentistry Fund, the Pharmacy Board Contingent Fund, the Veterinary Medical Board Contingent Fund, the Board of Registered Nursing Fund, the Osteopathic Medical Board of California Contingent Fund, the Optometry Fund, and the Board of Podiatric Medicine Fund. Moneys in the CURES accounts of each of those funds shall, upon appropriation by the Legislature, be available to the Department of Justice solely for maintaining CURES for the purposes of regulating prescribers and dispensers of controlled substances. All moneys received by the Department of Justice pursuant to this section shall be deposited in the CURES Fund described in Section 11165 of the Health and Safety Code.

SEC. 3. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds ~~from in the CURES accounts within~~ the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, ~~and the Osteopathic Medical Board of California Contingent Fund, the~~ *Veterinary Medical Board Contingent Fund, the Optometry Fund, the Board of Podiatric Medicine Fund, and the CURES Fund*, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III and Schedule IV controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds ~~from for~~ the Department of Justice ~~for the purpose of finding CURES~~. The department may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. ~~Funds~~ *The department shall make information about the amount and the source of all private grant funds it receives for support of CURES available to the public. Grant funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the*

1 Pharmacy Board Contingent Fund, the State Dentistry Fund, the  
2 Board of Registered Nursing Fund, the Naturopathic Doctor's  
3 Fund, or the Osteopathic Medical Board of California Contingent  
4 Fund to pay the costs of reporting Schedule III and Schedule IV  
5 controlled substance prescriptions to CURES.

6 (c) CURES shall operate under existing provisions of law to  
7 safeguard the privacy and confidentiality of patients. Data obtained  
8 from CURES shall only be provided to appropriate state, local,  
9 and federal persons or public agencies for disciplinary, civil, or  
10 criminal purposes and to other agencies or entities, as determined  
11 by the Department of Justice, for the purpose of educating  
12 practitioners and others in lieu of disciplinary, civil, or criminal  
13 actions. Data may be provided to public or private entities, as  
14 approved by the Department of Justice, for educational, peer  
15 review, statistical, or research purposes, provided that patient  
16 information, including any information that may identify the  
17 patient, is not compromised. Further, data disclosed to any  
18 individual or ~~agency~~ *agency*, as described in this ~~subdivision~~  
19 *subdivision*, shall not be disclosed, sold, or transferred to any third  
20 party.

21 (d) For each prescription for a Schedule II, Schedule III, or  
22 Schedule IV controlled substance, as defined in the controlled  
23 substances schedules in federal law and regulations, specifically  
24 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21  
25 of the Code of Federal Regulations, the dispensing pharmacy or  
26 clinic shall provide the following information to the Department  
27 of Justice on a weekly basis and in a format specified by the  
28 Department of Justice:

29 (1) Full name, address, and ~~the~~ telephone number of the ultimate  
30 user or research subject, or contact information as determined by  
31 the Secretary of the United States Department of Health and Human  
32 Services, and the gender, and date of birth of the ultimate user.

33 (2) The prescriber's category of licensure and license ~~number~~;  
34 ~~number~~, the federal controlled substance registration ~~number~~;  
35 ~~number~~, and the state medical license number of any prescriber  
36 using the federal controlled substance registration number of a  
37 government-exempt facility.

38 (3) Pharmacy prescription number, license number, and federal  
39 controlled substance registration number.

(4) ~~NDC (National Drug Code)~~ *National Drug Code (NDC)*  
number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ~~ICD-9 (diagnosis code)~~, *International Statistical Classification of Diseases, 9th revision (ICD-9) Code*, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(e) ~~This section shall become operative on January 1, 2005. The CURES Fund is hereby established within the State Treasury. The CURES Fund shall consist of all funds made available to the Department of Justice for the purpose of funding CURES. Money in the CURES Fund shall, upon appropriation by the Legislature, be available for allocation to the Department of Justice for the purpose of funding CURES.~~

SEC. 4. Section 11165.1 of the Health and Safety Code is amended to read:

11165.1. (a) (1) A licensed health care practitioner eligible to prescribe Schedule II, Schedule III, or Schedule IV controlled substances or a pharmacist ~~may~~ *shall* provide a notarized application developed by the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient maintained within the Department of Justice, ~~and~~ *and, upon approval*, the department ~~may~~ *shall* release to that practitioner or pharmacist, the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP).

(A) An application may be denied, or a subscriber may be suspended, for reasons which include, but are not limited to, the following:

(i) Materially falsifying an application for a subscriber.

(ii) Failure to maintain effective controls for access to the patient activity report.

(iii) Suspended or revoked federal Drug Enforcement Administration (DEA) registration.

(iv) Any subscriber who is arrested for a violation of law governing controlled substances or any other law for which the

1 possession or use of a controlled substance is an element of the  
2 crime.

3 (v) Any subscriber accessing information for any other reason  
4 than caring for his or her patients.

5 (B) Any authorized subscriber shall notify the Department of  
6 Justice within 10 days of any changes to the subscriber account.

7 (2) To allow sufficient time for licensed health care practitioners  
8 eligible to prescribe Schedule II, Schedule III, or Schedule IV  
9 controlled substances and a pharmacist to apply and receive access  
10 to PDMP, a written request may be made, until July 1, 2012, and  
11 the Department of Justice may release to that practitioner or  
12 pharmacist the history of controlled substances dispensed to an  
13 individual under his or her care based on data contained in CURES.

14 (b) Any request for, or release of, a controlled substance history  
15 pursuant to this section shall be made in accordance with guidelines  
16 developed by the Department of Justice.

17 (c) ~~In~~ (1) *Until the Department of Justice has issued the*  
18 *notification described in paragraph (3), in order to prevent the*  
19 *inappropriate, improper, or illegal use of Schedule II, Schedule*  
20 *III, or Schedule IV controlled substances, the Department of Justice*  
21 *may initiate the referral of the history of controlled substances*  
22 *dispensed to an individual based on data contained in CURES to*  
23 *licensed health care practitioners, pharmacists, or both, providing*  
24 *care or services to the individual.*

25 (2) *Upon the Department of Justice issuing the notification*  
26 *described in paragraph (3) and approval of the application*  
27 *required pursuant to subdivision (a), licensed health care*  
28 *practitioners eligible to prescribe Schedule II, Schedule III, or*  
29 *Schedule IV controlled substances and pharmacists shall access*  
30 *and consult the electronic history of controlled substances*  
31 *dispensed to an individual under his or her care prior to*  
32 *prescribing or dispensing a Schedule II, Schedule III, or Schedule*  
33 *IV controlled substance.*

34 (3) *The Department of Justice shall notify licensed health care*  
35 *practitioners and pharmacists who have submitted the application*  
36 *required pursuant to subdivision (a) when the department*  
37 *determines that CURES is capable of accommodating the mandate*  
38 *contained in paragraph (2). The department shall provide a copy*  
39 *of the notification to the Secretary of the State, the Secretary of*  
40 *the Senate, the Chief Clerk of the Assembly, and the Legislative*



1 *Counsel, and shall post the notification on the department's*  
2 *Internet Web site.*

3 (d) The history of controlled substances dispensed to an  
4 individual based on data contained in CURES that is received by  
5 a practitioner or pharmacist from the Department of Justice  
6 pursuant to this section shall be considered medical information  
7 subject to the provisions of the Confidentiality of Medical  
8 Information Act contained in Part 2.6 (commencing with Section  
9 56) of Division 1 of the Civil Code.

10 (e) Information concerning a patient's controlled substance  
11 history provided to a prescriber or pharmacist pursuant to this  
12 section shall include prescriptions for controlled substances listed  
13 in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code  
14 of Federal Regulations.

15 SEC. 5. Part 21 (commencing with Section 42001) is added to  
16 Division 2 of the Revenue and Taxation Code, to read:

17  
18 PART 21. CONTROLLED SUBSTANCE UTILIZATION  
19 REVIEW AND EVALUATION SYSTEM (CURES) TAX LAW  
20

21 42001. For purposes of this part, the following definitions  
22 apply:

23 (a) "Controlled substance " means a drug, substance, or  
24 immediate precursor listed in any schedule in Section 11055,  
25 11056, or 11057 of the Health and Safety Code.

26 (b) "Insurer" means a health insurer licensed pursuant to Part  
27 2 (commencing with Section 10110) of Division 2 of the Insurance  
28 Code, a health care service plan licensed pursuant to the  
29 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2  
30 (commencing with Section 1340) of Division 2 of the Health and  
31 Safety Code), and a workers' compensation insurer licensed  
32 pursuant to Part 3 (commencing with Section 11550) of Division  
33 2 of the Insurance Code.

34 (c) "Qualified manufacturer" means a manufacturer of a  
35 controlled substance doing business in this state, as defined in  
36 Section 23101, but does not mean a wholesaler or nonresident  
37 wholesaler of dangerous drugs, regulated pursuant to Article 11  
38 (commencing with Section 4160) of Chapter 9 of Division 2 of  
39 the Business and Professions Code, a veterinary food-animal drug  
40 retailer, regulated pursuant to Article 15 (commencing with Section

1 4196) of Chapter 9 of Division 2 of the Business and Professions  
2 Code, or an individual regulated by the Medical Board of  
3 California, the Dental Board of California, the California State  
4 Board of Pharmacy, the Veterinary Medical Board, the Board of  
5 Registered Nursing, the Physician Assistant Committee of the  
6 Medical Board of California, the Osteopathic Medical Board of  
7 California, the State Board of Optometry, or the California Board  
8 of Podiatric Medicine.

9 42003. (a) For the privilege of doing business in this state, an  
10 annual tax is hereby imposed on all qualified manufacturers in an  
11 amount of \_\_\_\_ dollars (\$\_\_\_\_), for the purpose of establishing  
12 and maintaining enforcement of the Controlled Substance  
13 Utilization Review and Evaluation System (CURES), established  
14 pursuant to Section 11165 of the Health and Safety Code.

15 (b) For the privilege of doing business in this state, a tax is  
16 hereby imposed on a one time basis on all insurers in an amount  
17 of \_\_\_\_ dollars (\$\_\_\_\_), for the purpose of upgrading CURES.

18 42005. Each qualified manufacturer and insurer shall prepare  
19 and file with the board a return, in the form prescribed by the board,  
20 containing information as the board deems necessary or appropriate  
21 for the proper administration of this part. The return shall be filed  
22 on or before the last day of the calendar month following the  
23 calendar quarter to which it relates, together with a remittance  
24 payable to the board for the amount of tax due for that period.

25 42007. The board shall administer and collect the tax imposed  
26 by this part pursuant to the Fee Collection Procedures Law (Part  
27 30 (commencing with Section 55001)). For purposes of this part,  
28 the references in the Fee Collection Procedures Law (Part 30  
29 (commencing with Section 55001)) to “fee” shall include the tax  
30 imposed by this part and references to “feepayer” shall include a  
31 person required to pay the tax imposed by this part.

32 42009. All taxes, interest, penalties, and other amounts  
33 collected pursuant to this part, less refunds and costs of  
34 administration, shall be deposited into the CURES Fund.

35 42011. The board shall prescribe, adopt, and enforce rules and  
36 regulations relating to the administration and enforcement of this  
37 part.

38 SEC. 6. No reimbursement is required by this act pursuant to  
39 Section 6 of Article XIII B of the California Constitution because  
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or  
2 infraction, eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section 17556 of  
4 the Government Code, or changes the definition of a crime within  
5 the meaning of Section 6 of Article XIII B of the California  
6 Constitution.

7 SEC. 7. This act is an urgency statute necessary for the  
8 immediate preservation of the public peace, health, or safety within  
9 the meaning of Article IV of the Constitution and shall go into  
10 immediate effect. The facts constituting the necessity are:

11 In order to protect the public from the continuing threat of  
12 prescription drug abuse at the earliest possible time, it is necessary  
13 this act take effect immediately.